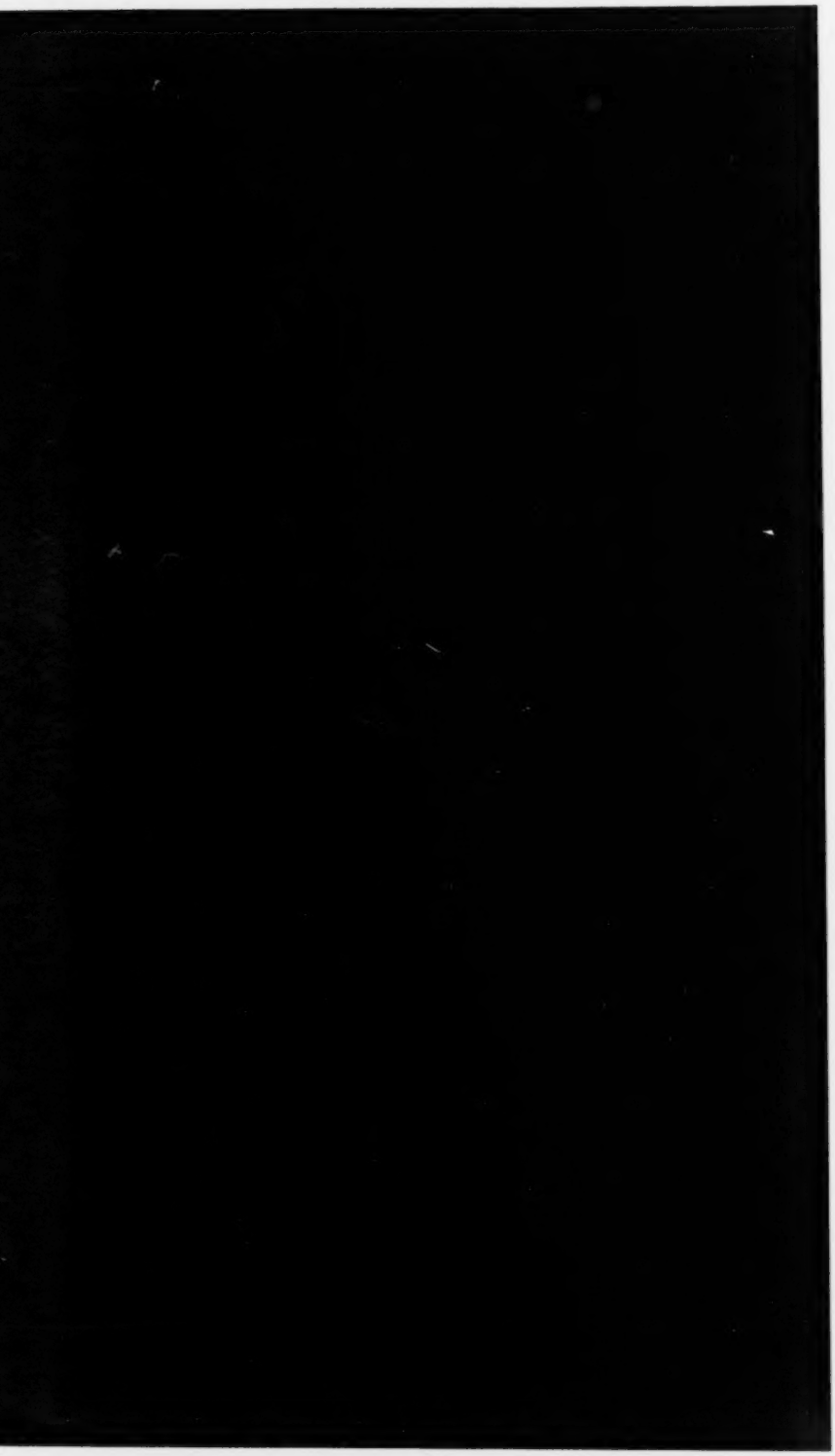

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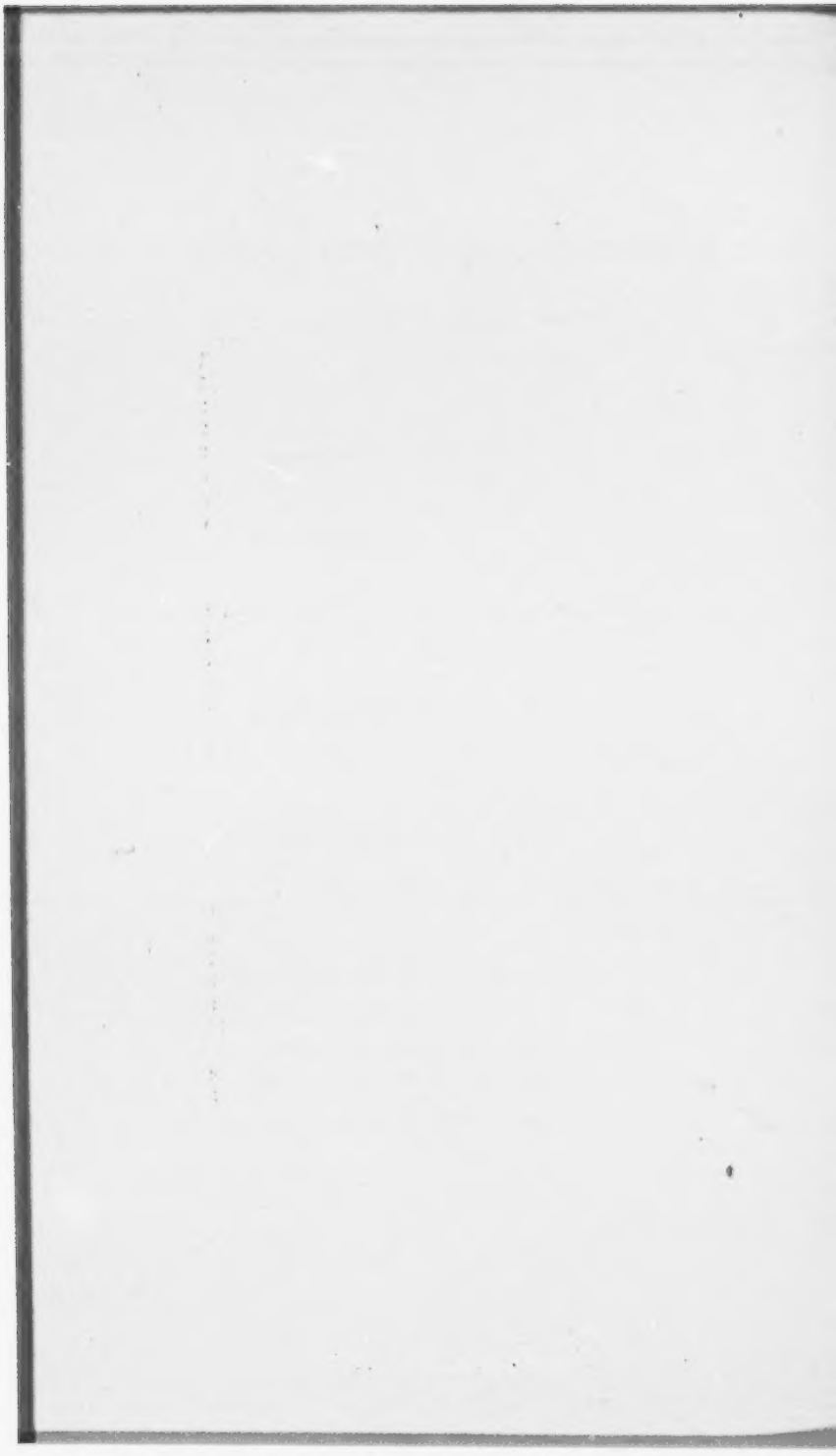

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 503

THOMAS L. "JACK" SPIERS, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 44–51) is not yet reported.[1]

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on August 29, 1945 and the order denying the petition for rehearing on Sept. 19, 1945 (R. 52, 54–5). The petition for a writ of certiorari was filed on October 11, 1945.

[1] This case was decided in a single opinion together with *Barnett* v. *Bowles*, now pending on petition for certiorari, No. 451, present Term.

Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App. Supp. IV, Sec. 901, as amended by the Stabilization Extension Act of 1944, Public Law 383, 78th Cong., 2d Sess., and by the Act of June 30, 1945, Public Law 108, 79th Cong., 1st Sess., (herein sometimes termed "the Act") making applicable Section 204 of the Judicial Code, as amended (28 U. S. C. Sec. 347).

QUESTION PRESENTED

Whether the Twenty-first Amendment to the United States Constitution precludes the application of a regulation establishing maximum prices for alcoholic beverages to sales made in contravention of state prohibitory legislation.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act appear in the appendix, *infra*, pp. 6–11. The maximum price regulation involved in this proceeding is printed in the Federal Register (8 F. R. 11161).

STATEMENT

Petitioner filed a protest with the Price Administrator pursuant to Section 203 (a) of the Act asserting that Maximum Price Regulation No. 445, a comprehensive regulation establishing nationwide maximum prices for distilled spirits and wines, was invalid as applied to sales in the State

of Mississippi (R. 1–4). Petitioner alleged that he was engaged in the business of selling alcoholic beverages in the State of Mississippi in violation of the State prohibition legislation (Miss. Code, Vol. II, Title II, Chap. 3), and asserted that the application of price control under the Act to such sales was in violation of the Twenty-first Amendment to the United States Constitution (R. 1, 3).[2] The protest was denied by the Price Administrator (R. 9–14), and petitioner thereupon filed a complaint with the United States Emergency Court of Appeals (R. 38). That court rejected petitioner's attack upon the constitutionality of the regulation and dismissed the complaint (R. 44–52). One judge dissented on statutory grounds not here urged.[3]

ARGUMENT

Petitioner's attack upon the regulation is premised upon the prohibition of the Twenty-first Amendment against the transportation or importation of intoxicating liquors into any state for delivery or use in the state in violation of its laws.[4] Petitioner appears to contend that this

[2] The protest also set forth objections to the maximum price regulation based upon the terms of the Emergency Price Control Act. These latter objections have not been urged in the petition.

[3] The statutory construction grounds, however, are relied upon by the petitioner in *Barnett* v. *Bowles*, No. 451.

[4] Section 2 of the Twenty-first Amendment provides as follows: "The transportation or importation into any State, Territory, or possession of the United States for delivery

provision imposes upon Congress the absolute duty to prevent the importation of intoxicating beverages into Mississippi, and that the right to establish war-time price control is in conflict with and must yield to the paramount obligation to bar the importation of liquor into the state (Pet. 10).

This contention, however, must fail for the lack of a showing that there is in fact any conflict between the asserted Congressional duty and the application to Mississippi of the nation-wide price regulation. Petitioner offered no evidence in support of this contention, nor does any such conflict appear as a matter of law from the face of the regulation and the applicable constitutional and statutory provisions. By the Liquor Enforcement Act of 1936 (49 Stat. 1928, 27 U. S. C. Sec. 221) Congress made it a federal offense to transport or import intoxicating liquors into states where sales of such liquors are prohibited. No evidence has been presented that this statute is not being fully enforced, or that enforcement is in any wise impeded by the maximum price regulation in question. In fact, as was found by the court below, enforcement of this regulation inevitably operates in aid of the state and federal laws which prohibit importation and sale of liquor in Mississippi by minimizing the inevitable tendency of sellers to market a scarce commodity in an area of uncontrolled prices (R. 5–6).

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or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The alternative argument that the Twenty-first Amendment has wholly withdrawn from the federal government authority to regulate intoxicating liquors (Pet. 8) has been decisively rejected. *United States* v. *Frankfort Distilleries,* 324 U. S. 293; *Jameson & Company* v. *Morgenthau,* 307 U. S. 171. This Court has likewise had occasion repeatedly to reject the suggestion that the illegality of an act under state law confers an immunity from federal legislation. *License Tax Cases,* 5 Wall. (72 U. S.) 462; *Wainer* v. *United States,* 299 U. S. 92; *United States* v. *Sullivan,* 274 U. S. 259; *United States* v. *One Ford Coupe Automobile,* 272 U. S. 321.

We submit that there is no substance to the suggestion that the maximum price regulation under attack in any wise conflicts with the provisions of the Twenty-first Amendment to the Constitution.

CONCLUSION

The case was rightly decided and does not warrant review.

Respectfully submitted,

J. HOWARD MCGRATH,
Solicitor General.

RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

NOVEMBER 1945.